APPEAL NO. 040170
FILED MARCH 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on December 30, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on January 31, 2003, with a 10% impairment rating (IR). The claimant appealed, arguing that the great weight of the other medical evidence is contrary to the designated doctor's certification of MMI and IR. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on _____. The evidence reflected that the claimant underwent a two-level spinal fusion on June 11, 2003. The designated doctor examined the claimant on April 24, 2003, and opined at that time that the claimant did not need surgery. The designated doctor certified that the claimant reached MMI on January 31, 2003, and assessed an IR of 10% using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) assessing a 5% IR for Diagnosis-Related Estimate (DRE) Lumbosacral Category II and a 5% IR for DRE Cervicothoracic Category II. In a letter of clarification dated September 8, 2003, the designated doctor stated that there was no indication that the claimant's condition improved as a result of the surgery performed and that he did not believe his original certification of MMI and IR should be changed.

There is no evidence to indicate that preoperative flexion/extension x-rays were performed in this case. We have previously held that with regard to hearings conducted after July 22, 2003, involving IRs for spinal surgery, which would be affected by Texas Workers' Compensation Commission (Commission) Advisory 2003-10, it is error not to consider and apply that advisory. Texas Workers' Compensation Commission Appeal No. 032399-s, decided November 3, 2003. Although there is evidence that the designated doctor considered the surgery performed, there is no indication that he considered and applied Advisory 2003-10. Accordingly, we reverse and remand the case for the designated doctor to consider and apply Advisory 2003-10 in assigning the IR. Texas Workers' Compensation Commission Appeal No. 032769, decided December 11, 2003. As the MMI date may also be affected, we also remand for the designated doctor to determine whether the MMI date remains January 31, 2003, or whether a different MMI date is warranted.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision

and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge